

**Impact Analysis – Proposed Rule Change
April 2017**

Agency: DHHS/Division of Child Development and Early Education
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Chapter Title: ***10A NCAC 10 SUBSIDIZED CHILD CARE RULES***

Rule Amendments:

10A NCAC 10 .0308 - Sanctions and Appeals for Fraudulent Misrepresentation

10A NCAC 10 .0309 - Correction of Overpayments and Underpayments

10A NCAC 10 .0313 - Termination of Approval based upon an Administrative Action issued against Operator

10A NCAC 10 .0602 - Continued Participation in the Subsidized Child Care Assistance Program

Rule Proposed for Repeal: *10A NCAC 10 .0702* - Approval and Continued Participation in the Subsidized Child Care Program

State Impact: Yes
Local Impact: Yes
Substantial Economic Impact: Possible
Small Business Impact: Yes
Private Sector/Public: Yes
Federal Impact: Possible

Statutory Authority: Authority
G.S. 143B-153; 143B-53(2a);

I. SUMMARY OF PROPOSED REGULATIONS

The North Carolina Social Services Commission and the Division of Child Development and Early Education (DCDEE) propose to amend rules *10A NCAC 10 .0308*, *10A NCAC 10. 0309*, *10A NCAC 10 .0313*, and *10A NCAC 10 .0602* and repeal rule *10A NCAC 10 .0702*.

The amendments to rule *10A NCAC 10 .0308* will add the Division of Child Development and Early Education to the parties that may impose sanctions on recipients and providers for fraudulent misrepresentation and increases the penalties imposed for fraudulent misrepresentation.

Amendments to rule *10A NCAC 10. 0309* will define the process of correcting overpayments and underpayments made to a provider that was a result of an inadvertent error or fraudulent misrepresentation.

Amendments to rule *10A NCAC 10 .0313* adjust the wording of the rule and provide greater clarity. The amendments are not substantive.

Amendments to rule *10A NCAC 10 .0602* will meet Federal requirements for training under Child Care and Development Block Grant Act of 2014 (CCDBG) and provide clarification for the requirements for participation in the North Carolina Subsidized Child Care Assistance Program in regards to non-compliance. The amendments are requirements or clarifications needed to obtain funds through the CCDBG which is the largest source of federal funding for North Carolina's Subsidized Child Care Assistance Program. This rule also addresses the new procedures for enrollment in the NC FAST Provider Portal.

Rule *10A NCAC 10 .0702* is being repealed. This rule addresses requirements of family child care homes which is being incorporated into rule *10A NCAC 10 .0602* as child care facilities. Once rule *10A NCAC 10 .0602* is amended, it will address requirements for all child care facilities.

II. MINIMAL IMPACT RULES

10A NCAC 10 .0313 TERMINATION OF APPROVAL BASED UPON AN ADMINISTRATIVE ACTION ISSUED AGAINST OPERATOR

Description:

The Division of Child Development and Early Education (DCDEE) proposes to amend rule *10A NCAC 10 .0313*. Amendments to this rule provide clarification related to the impact of Administrative Actions on child care providers in terms of future transactions.

Purpose:

The purpose of the changes to this rule is to clarify existing language and to change the name of the program to the Subsidized Child Care Assistance Program. Also, the term nonlicensed child care home is removed from the rule because North Carolina no longer recognizes this type of child care arrangement. North Carolina does recognize three (3) other types of child care arrangements which are centers that are exempt from licensure pursuant to *G.S. 110-106*, centers operating in other states, and centers certified by the United States Department of Defense.

Impact:

There is no fiscal impact for this rule because none of the changes made are substantive. The regulated community will benefit from greater clarity.

10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

Rule *10A NCAC 10 .0702* is being repealed. This rule addresses requirements of family child care homes which is being incorporated into rule *10A NCAC 10 .0602* as child care centers. Once rule *10A NCAC 10 .0602* is amended, it will address requirements for all child care facilities.

III. ANALYSIS OF SUBSTANTIAL IMPACT RULES

As stated above, the changes to rule *10A NCAC 10 .0313* are non-substantive, resulting in no impact and rule *10A NCAC 10 .0702* is being repealed; therefore, the following discussion of impact will focus on rules *10A NCAC 10 .0308*, *10A NCAC 10 .0309*, and *10A NCAC 10 .0602*.

Background:

After several egregious fraudulent cases were uncovered, the Division of Division of Child Development and Early Education was instructed by the Office of the Internal Auditor to implement a process to detect and deter fraudulent activity. The following changes to Rules *10A NCAC 10 .0308*, *10A NCAC 10 .0309* and *10A NCAC 10 .0602* are designed to more effectively design and implement such a process.

The lengthiest and most costly investigation involved two small facilities run by a single owner that were licensed for capacities of 89 and 42 children. By the investigation's end in 2013, it was revealed that, of the 3.7 million dollars in state and federal funds the facilities received over the course of 8 years, \$270,090 was overpayment because of fraudulent activity. The facility received a one-year sanction in 2010 for fraudulently misrepresenting attendance records over the course of one year that resulted in an overpayment of \$5280. In 2011, another specific incident that resulted in an overpayment of \$572.40, when the former owner attempted to cover the transfer of a child from one facility to the other. Over the course of a four-year period, 2007-2011, the facility was cited for 85 violations, some that were related to record keeping and direct child care issues. Later in 2011, the facility owner changed ownership of the facilities and covered involvement in the facilities to avoid program sanctions that would have permanently disqualified the facilities. Thus, the facilities received \$68,238 for new enrollments after the ownership change, in which the former owner would not have been entitled. After the change of ownership investigators identified more than \$196,000 in personal expenses had been paid out from the facilities bank account by the former owner from 2011-2013.

In 2014, another investigation of a large facility that had a licensed capacity of 100 children revealed that \$85,310 were improperly expended to this facility over the course of one year. The facility falsified attendance records that were submitted for payment by claiming children were present at the facility when they were not present. The facility also continued to claim three children in one family for payment after the children had moved to another state. This facility cared for school age children in an unlicensed space and represented the time of care/shift incorrectly when requesting payment.

During 2015-2016, an investigation of a large facility that had a licensed capacity of 153 children found that \$6,964.36 were improperly expended to this facility over a period of six months. It was found that the facility falsified attendance records that were submitted for payment by claiming children were present at the facility when they were not present. 202 instances were identified where a child was indicated absent on classroom attendance records and/or CACPF weekly attendance forms but reported present on the county day care attendance sheet.

Purpose of Rules:

To adequately provide corrective action to the types of fraudulent activity exemplified above, the scope of the problem needs to be identified. Currently, the scale and scope of these instances of fraudulent activity is unknown. The primary purpose of implementing these rule changes is to help determine the scope of the problem, providing a greater understanding of the problem and developing and implementing the most appropriate course of action to prevent, deter and correct fraudulent activity.

The purpose of these rules is also to deter and reduce fraudulent misrepresentation as it relates to child care providers and recipients of child care subsidies. Rule *10A NCAC 10 .0308* will give authority to the Division to investigate and recover fraudulent payments. There is vast potential for fraudulent activity with the current number of children receiving subsidy payments averaging 74,403 per month. Depending on the scale and scope of fraudulent activity, the resulting savings and recoupment of funds could provide the added benefit of providing more services to children if reimbursed funds result from the investigations.

Rule *10A NCAC 10 .0309* will outline the methodology for the Division to recoup overpayments due to fraudulent misrepresentation, inadvertent error, and administrative error. The Division must deduct overpayments from the county's allocation and this rule gives counties the opportunity to recoup monies from providers. Rule *10A NCAC 10 .0602* is designed to improve the efficiency of provider enrollment in the Subsidized Child Care Assistance Program, as well as explicitly outline the progressive penalties for non-compliance with the requirements of the Subsidized Child Care Assistance Program.

In addition, regardless of the actual prevalence of fraudulent activity, there is a non-quantifiable cost that occurs when there is a public perception of extensive fraud resulting in a general lack of trust in the system. In addition to reassuring state and federal agencies, another potential impact of these rule changes is restoring public faith in the system.

Description of Rules:

The amendments to rule *10A NCAC 10 .0308* will add the Division of Child Development and Early Education to the parties that may impose sanctions on recipients and providers for fraudulent misrepresentation, clarify what actions on the part of recipients and providers are considered fraudulent, and increase the penalties imposed for fraudulent misrepresentation. The concept of reckless disregard as to the accuracy of records is added to the reasons for imposing sanctions. The penalty for commission of fraudulent misrepresentation is increased to require repayment of funds improperly received and permanent disqualification from receiving funds through the Subsidized Child Care Assistance Program upon the first incidence of fraudulent misrepresentation. Also, the Division of Child Development and Early Education is added to the parties that may investigate and take actions related to suspected falsification, inaccurate records, or suspected fraudulent misrepresentation.

Currently, the Division of Child Development and Early Education does not have the authority to withhold future payments from a provider without the provider's permission. Rule *10A NCAC 10 .0309* will allow the Division to recoup funds from a provider who improperly received an overpayment of subsidy funds.

Amendments to rule *10A NCAC 10 .0602* will outline new requirements for providers to enroll and requirements for continued enrollment in the Subsidized Child Care Assistance Program following confirmed noncompliance with requirements for participation in the Subsidized Child Care Assistance program. One of the new requirements for providers to enroll includes requiring child care providers to enroll with North Carolina Families Accessing Services through Technology (NC FAST), contracting with the State's payment vendor for payment by direct deposit.

Per Rule .0308, a program shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program after the first instance of confirmed fraud; however, Rule .0602 outlines the progressive penalties regarding continued noncompliance. Requirements to maintain enrollment after confirmed noncompliance are as follows: Upon the first incidence of non-compliance, a time-bound corrective action plan is issued. Upon the second incidence of non-compliance, the provider is prohibited from enrolling new children receiving child care subsidies for one (1) year in addition to completion of a time-bound corrective action plan. Finally, upon a third incidence of non-compliance within a two-year period the provider is terminated from and permanently ineligible to participate in the Subsidized Child Care Assistance Program. Examples of noncompliance are listed below:

- Not allowing a parent unlimited access to their child
- Not maintaining accurate daily attendance records
- Not maintaining accurate daily records of arrival and departure times for each child
- Caring for children in unlicensed space
- Not collecting parent fees or not providing a receipt to the parent when fees are paid
- Not maintaining appropriate child/staff ratios
- Failure to report and/or act on suspected child maltreatment

Economic Impact:

As previously stated, there is no current data to estimate the scale or scope of instances of fraud. The primary purpose of implementing these rule changes is to help determine the scope of the problem, provide a greater understanding of the problem and develop and implement the most appropriate course of action to prevent, deter and correct fraudulent activity.

The DHHS Office of the Internal Auditor has entered in to an agreement with the Division of Child Development and Early Education to conduct detailed investigations when Division staff find discrepancies in initial investigations during routine and complaint visits to child care providers. All investigation activities will be completed by Internal Auditor and DCDEE staff; counties will not be responsible for fraud detection or investigation.

To address the new investigatory needs of the rule changes, four new positions have been approved within the Division of Child Development and Early Education to assess child care provider conduct. The Division intends to investigate 10% of providers (400/yr), randomly selected, to determine the size and scope of instances of fraud. These staff will make routine provider visits to examine records pertaining to participation in the Subsidized Child Care Assistance Program. Based on the fraud investigations that occurred between 2010 and 2016, the Division estimates that approximately 3 Admin Office II staff hours will be required per child record covering a 6-month period. That would require a staff person to spend at least 300 hours investigating records that date back six months. However, staff time costs will vary per the length, size, and complexity of the investigation; for example, the costs for the lengthy investigation discussed earlier in the background section required 1,215 hours at an approximate cost of \$87,480. While local county departments of social services and local purchasing agencies currently complete repayment agreements as part of staff responsibilities, increases in the number of cases investigated would result in more DCDEE staff time to create, track, and enforce repayment agreements for inadvertent errors. Subsequently, the creation of these new positions will mean all investigatory costs be incurred by the collective annual compensation of \$275,212 for the four new positions.

Position Title	# of Positions	FTEs	Salary for 1 FTE	Benefits	Total Employee Cost, 1 FTE	Total Cost, 4 FTEs	Position Effective Date
Admin Officer II	4	4	\$51,502	\$17,301	\$68,803	\$275,212	7/1/2016

Job hours/descriptions:

The major functions/duties of these positions are to:

30% Perform Child Care Provider Visits

- Creating a random sample of child care providers to visit each month.
- Conduct on-site visits to child care providers.
- Evaluate provider records related to subsidized child care assistance for accuracy to identify error, non-compliance, and/or fraudulent misrepresentation.
- Make appropriate referrals to DCDEE Licensing Enforcement, local agencies which administer the Subsidized Child Care Assistance Program, and the Office of Internal Auditor (OIA).
- Complete required documentation.

25% Coordinate with the Office of the Internal Auditor

- Utilize reports generated by the OIA to identify child care providers at high risk of noncompliance or fraudulent misrepresentation.
- Make on-site visits to high risk child care providers to review records related to subsidized child care assistance for accuracy to identify errors, non-compliance and/or fraudulent misrepresentation.
- Work with OIA to determine if further investigation is warranted.

- Complete required documentation.

25% Coordinate with DCDEE Regulatory Services Licensing Enforcement Unit

- Accept referrals from the DCDEE Licensing Enforcement Unit regarding suspected falsification of attendance records, over-capacity situations, non-compliance with subsidy program requirements, and/or fraudulent misrepresentation.
- Conduct on-site visits to identified child care providers.
- Evaluate child care provider records related to subsidized child care assistance for accuracy to identify errors, non-compliance and/or fraudulent misrepresentation.
- Complete required documentation.

15% Technical Assistance to local agencies related to fraudulent misrepresentation detection, overpayments, noncompliance, and sanctions.

- Serve as first point of contact for local agencies questions and concerns related to child care provider overpayments, noncompliance and sanctions.
- Interact with local agencies as needed in person, on the phone, or via web based solutions.
- Provide responses to questions and concerns received from local agency staffs.
- Complete required documentation.

5% Training

- Develop and manage training materials for training local agencies which administer the Subsidized Child Care Assistance Program related to non-compliance, fraudulent misrepresentation, detection of fraudulent misrepresentation, and overpayments.
- Present training in person, on the phone or via web based solutions.
- Complete required documentation.

In addition, an Auditor II position has been requested to collaborate with the investigators and provide oversight to all investigations along with data processing and analysis. More specifically, the position would be responsible for determining whether the level of fraudulent errors in a case warrants an investigation of “fraudulent misrepresentation”, as well as leading the investigations of centers that have met the threshold of fraudulent misrepresentation.

Position Title	# of Positions	FTEs	Salary for 1 FTE	Benefits	Salary & Fringe Per FTE	Totals
Auditor II	1	1	\$73,000	\$23,011	\$96,011	\$96,011

If fraudulent activity is discovered, the recoupment of funds is a potentially significant impact of the rule changes. Currently, the Division does not have the authority to withhold payments from a provider. The current rule requires counties to recoup overpayments and provider administrative errors through voluntary repayment agreements or pursue court action. This creates a situation where the county or LPA must ‘up-front’ the total cost of any corrections while waiting for the recipient or provider to comply with and complete the repayment agreement on a voluntary basis, or await the outcome of a court action.

The proposed strategy for recouping overpayments will be to withhold funds from future payments to providers. This will result in savings to counties, which will no longer be required to “up front” the costs of overpayments. Furthermore, the Division will not be forced to go to court to try to recover monies that may have already been spent. The State typically only recoups a fraction of overpayments when going through the court processes with a provider, and court action is time consuming and costly in terms of manpower as outlined above. This recoupment strategy meets CCDF requirements for program integrity that states develop and implement effective procedures to ensure integrity and accountability.

Per data provided by the Licensing Enforcement Program section in the Regulatory Unit, estimates of costs of court action include compensation for attorneys, program managers, supervisors, consultants, administrative assistants and DOJ staff totaling \$3,924 per hour (excluding expert witnesses), as well as reimbursement for travel of \$173.34 per hour for a total of \$4097.34. In addition, per data provided by the Licensing Enforcement Program section, the Division pursues an average of two court actions annually. Therefore, between 2010 and 2016, the Division pursued 12 court actions at a total cost of \$49,168.08. The proposed rule would eliminate these costs in the future.

Under the pre-revised rule, when administrative errors are found, counties and local purchasing agencies must absorb the dollar amount of the errors during the correction of errors process. Child care providers and recipients are not held responsible for administrative errors made by local purchasing agencies and county departments of social services. Under the proposed revised rule, corrections for inadvertent errors must now be made by providers at the time of discovery and to the date of origin as stated in the Subsidized Child Care Assistance Program policies. This will result in savings to counties. Preliminary data collected from the negative special listing report shows 6 of 100 counties had a total of 44 inadvertent errors between 2015-2017 totaling \$9,812.45. This complies with the Child Care and Development Block Grant requirement that improperly spent funds shall be returned immediately

The new requirements outlined in Rule *10A NCAC 10 .0602* will have several potential positive impacts.

- Increased required regulatory compliance may result in better overall health and safety for children. However, those potential benefits cannot be quantified because the Division is unable to predict whether, and to what extent, these proposed rules will incentivize changes in provider behavior.
- Provider enrollment will occur electronically via NC FAST, significantly reducing county staff time processing provider enrollments on paper forms. Survey of randomly selected counties revealed an estimate of 1 hour of time spent processing paper enrollment forms per provider. With 63 small counties with an average of 14 providers; 32 medium counties with an average of 50 providers and 5 large counties with an average of 271 providers, it is estimated a savings of 3837 hours of work. It is difficult to quantify the costs saved in salary, as salaries for eligibility case workers vary by County; however, according to Indeed (<https://www.indeed.com/salaries/Eligibility-Worker-Salaries,-North-Carolina>), the average salary for an eligibility case worker in NC is \$36,424, which is \$17.51/hr. This would mean an estimated savings of \$67,185.87.

- County staff will be relieved of providing instructions and assistance for providers on program enrollment requirements and payment issues. NC FAST staff will take on that customer service role, and the associated time costs, through their provider Help Desk and the Provider Portal. These staff time costs are highly variable from county to county and cannot be quantified.

In addition to the benefits, several costs may also be incurred due to the new electronic system requirements. Some providers may not have a computer or access to the internet and will need to go to their local library or elsewhere to access the internet. Providers must also have a bank account to receive direct deposit.

As discussed earlier, the changes to rule *10A NCAC 10 .0602* explicitly outline the progressive penalties for non-compliance with the requirements of the Subsidized Child Care Assistance Program. Under the new rule, the second instance of noncompliance results in the provider being prohibited from accepting new children from the Subsidized Child Care Assistance Program. This penalty for noncompliance may have several negative impacts.

- Providers: Some child care providers may suffer financially because they will be unable to operate without new subsidy children and are required to bear the costs of repaying inappropriately disbursed funds.
- Families: If a provider closes or reduces the number of classrooms in their facility due to inability to accept new children from the Subsidized Child Care Assistance Program, families will be inconvenienced and forced to find alternative child care arrangements. Although county DSSs and LPAs assist with placing new children, families may have difficulty finding child care arrangements due to location and availability of slots. If a provider that accepts subsidy is inconvenient for the family due to location, a hardship may be placed upon the family. If no provider accepting subsidy can be found, the family will need to pay the full cost of care for their child(ren).
- Workforce: Members of the child care workforce will also be displaced and experience a loss of income until they find new employment.

Any savings from fraud deterrence and the recoupment of overpayments could provide the added benefit of making more resources available to serve children on the waiting list. However, the scale of existing fraud and the potential savings from fraud deterrence and recoupment is highly uncertain.

Regardless of the actual prevalence of fraudulent activity and the ultimate cost effectiveness of the proposed fraud deterrence activities, there is a non-quantifiable cost that occurs when there is a public perception of extensive fraud resulting in a general lack of trust in the system. Reassuring state and federal agencies of the Division's commitment to strong oversight of subsidy funds and restoring public faith in the system are potential benefits of the proposed rules.

IV. UNCERTAINTIES

The primary uncertainty of these rule change is the inability to predict the scale and scope of fraudulent activity throughout the state. The net impact (benefits minus costs) of the proposed rules is dependent upon many uncertain – and unquantifiable - factors, including:

- The current scale and scope of fraudulent activity,
- The Division's likely rate of fraud detection,
- The effect of these rules on provider behaviors (fraud deterrence), and
- The cost of fraud detection and deterrence activities

A cost-benefit analysis comparing the costs of developing and implementing the proposed investigatory process versus the amount of fraudulent money recouped will not be possible until the process is implemented.

In addition, the uncertainty of the scale and scope of fraudulent activity corresponds with an uncertainty of whether the process will need to be amended. As mentioned above, If the investigatory process reveals that fraud is prevalent, the amount of resources invested may need to be increased; while, alternatively, if fraud is rare, the amount of resources may need to be decreased.

The largest funding source for North Carolina's Subsidized Child Care Assistance Program is provided by the Child Care and Development Fund Block Grant, recently reauthorized as the Child Care and Development Block Grant Act (CCDBG) of 2014. A condition of continued CCDF funding is that the Division ensure the integrity and accountability of the program. The federal government does not require North Carolina to take action at this time. The Division is acting proactively by initiating this rule revision to determine the current scope and scale of fraudulent activity and ensure that effective procedures are in place to protect the integrity of the Program. For SFY 2015-2016, the CCDF contributed \$140.8 million dollars to North Carolina's SCCA Program, which made up 39% of the total amount of subsidy funds. Rule *10A NCAC 10 .0602* addresses specific CCDBG requirements to clarify penalties for noncompliance; however, it is also implicit that the Division is expected to oversee that the spending of CCDBG funds occurs without fraudulent activity.

If systems are not put into place and egregious cases of fraud are discovered in the future, these federal dollars are potentially at risk. The State of North Carolina could be found non-compliant with the CCDF regulations and the federal government may decide to take punitive action. The following penalties may occur: The Secretary will disallow any improperly expended funds and/or an amount equal to or less than the improperly expended funds will be deducted from the administration portion of the State's allotment for the following fiscal year. In addition to these penalties, the following sanctions may occur. The State could be disqualified from the receipt of further funding under the CCDF and a penalty of not more than 4% of the allotted funds for a Fiscal Year could be withheld from the State. The probability of future fraudulent activity being discovered and the probability of the federal government deciding to act are both highly uncertain. Any punitive action would likely be substantial (>\$1M per year).

SUMMARY OF ECONOMIC IMPACT

State

Costs:

- New Staff Positions-- the cost of the four investigators (\$275,212) and an internal auditor (\$96,011)=\$371,223

- NC FAST customer service time-- NC FAST staff will take on the customer service role for providers, and the associated time costs, previously performed by county staff, through their provider Help Desk and the Provider Portal.

Benefits:

- Savings from fraud deterrence and the recoupment of overpayments
- Recouping overpayments by withholding funds from future payments to providers will alleviate the costs of court action

Local

Costs:

- No significant costs at the local level

Benefits:

- Dollar savings from no longer needing to provide up-front recoupment costs for provider administrative errors and overpayments
- Time savings from NC FAST electronic provider enrollment processing
- Time savings from customer service needs via NC FAST

Private

Costs:

- Minimal staff time providing any requested documentation from State investigators during an investigation
- Sanctions and repayments
- Inoperability of providers as penalty for fraud or repeated noncompliance may have a negative impact by displacing families and workforce

Benefits:

- Recoupment of fraudulent funds from noncompliant providers may be reallocated to compliant providers to serve additional children

10A NCAC 10 .0308 is proposed for amendment as follows:

10A NCAC 10 .0308 SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION

(a) The local purchasing agency or the Division shall impose sanctions for fraudulent misrepresentation when a person, whether an operator, as defined in G.S. 110-86(7) ~~provider~~ or recipient of child care subsidies, or someone claiming to be a ~~provider~~ an operator an operator or recipient of child care subsidies, does the following:

- (1) With ~~the~~ intent to deceive, makes a false statement or representation regarding a material fact, or fails to disclose a material fact; ~~and~~ or
- (2) With reckless disregard as to the accuracy of records, submits inaccurate records to the Department, Division, or local purchasing agency; and
- ~~(2)~~(3) As a result of the false statement or ~~representation or the omission~~, representation, omission, or submission of inaccurate records, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) Upon the first instance of fraudulent misrepresentation by a recipient, the ~~The~~ local purchasing agency or the Division shall ~~impose the following sanctions for fraudulent misrepresentation in addition to requiring~~ require the recipient to repay the amount of child care subsidy for which he or she was ~~is~~ ineligible to ~~receive~~; receive, and the recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

- ~~(1)~~ After the first incidence of fraudulent misrepresentation by a recipient, the ~~recipient shall be ineligible to receive subsidized child care services until overpayment is recouped in full or the local purchasing agency shall enter into a repayment agreement with the recipient if the recipient so desires;~~
- ~~(2)~~ After the second incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to participate in the subsidized child care program for three months; and
 - (A) shall repay the overpayment in full; or
 - (B) ~~the local purchasing agency shall enter into a new repayment agreement with the recipient if the recipient so desires;~~

- (3) After the third incidence of fraudulent misrepresentation by a recipient, the recipient shall be permanently ineligible to participate in the subsidized child care program and shall repay the overpayment in full.
 - (4) After the first incidence of fraudulent misrepresentation by a provider the provider shall not be paid with subsidized child care funds for any new children who enroll in the provider's program for 12 months; and
 - (A) the provider shall repay the overpayment in full; or
 - (B) the local purchasing agency shall enter into a repayment agreement with the provider if the provider so desires; and
 - (5) After the second incidence of fraudulent misrepresentation by a provider, the provider shall repay the overpayment in full, shall be permanently ineligible to participate in the subsidized child care program, and shall not be reimbursed for any services provided to children enrolled in the provider's program from the date of notification of sanction in accordance with G.S. 150B-23(c).
- (c) Upon the first instance of fraudulent misrepresentation by an operator, the local purchasing agency or the Division shall require the operator to repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program. If a recipient or provider enters into a repayment agreement and fails to comply with terms of that agreement: eligibility to participate in the subsidized child care program shall cease until repayment is made in full or the recipient or provider and the local purchasing agency agree to modify the repayment agreement.
- (d) Notwithstanding Subparagraphs (b) and (c) ~~(b)(4), (5), and (6)~~ of this Rule, the recipient or provider operator shall also be permanently ineligible to participate in the ~~subsidized child care program if:~~ Subsidized Child Care Assistance Program if convicted of fraudulent misrepresentation pursuant to G.S. 110-107.
- (1) ~~the total dollar amount of the fraudulent misrepresentation exceeds ten thousand dollars~~ (\$10,000); or
 - (2) ~~the recipient or provider is convicted of fraudulent misrepresentation pursuant to G.S. 110-~~ 107.
- (e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction. Appeal of a sanction shall not stay the termination of payments under this Rule.

(f) If an operator subject to a sanction under this Rule sells or transfers ownership of a child care facility, the new owner, as defined in 10A NCAC 10 .0102(5), shall be prohibited from receiving funds through the Subsidy Child Care Assistance Program for six months after the sale or transfer. If an operator subject to a sanction purchases a new child care facility or opens another facility, the sanction in effect against the operator shall attach to the new child care facility.

(g) The Division may require the local purchasing agency to investigate instances of suspected fraudulent misrepresentation or suspected falsification by a recipient, or to assist the Division in investigating instances of suspected fraudulent misrepresentation or falsification by an operator.

(h) The local purchasing agency shall notify the Division in writing within five days of issuing any sanction. Nothing in this Rule shall be construed as limiting child care services pursuant to 10A NCAC 10 .0906.

~~(f) (i) A child care provider~~ An operator may appeal any sanction imposed in Paragraph (b) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC ~~10.0312~~. 10 .0312; however, if the Division issues any sanction pursuant to this Rule, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

~~(g)(j)~~ (j) When a court of competent jurisdiction finds a recipient or ~~provider~~ operator guilty of fraudulent misrepresentation pursuant to Subparagraph ~~(d)(2)~~ (d) of this Rule, the sanction imposed is not subject to appeal under this Section.

(k) Nothing in this Rule shall prevent the Division from initiating its own investigation of suspected falsification, inaccurate records, or fraudulent misrepresentation related child care subsidy, and taking administrative action as a result of its findings and conclusions.

History Note: Authority G.S. 143B-153;

Eff. April 1, 2001;

Amended Eff. _____ 2016; December 1, 2011.

10A NCAC 10 .0309 is proposed for amendment as follows:

10A NCAC 10 .0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS

(a) An overpayment made to an operator as a result of an inadvertent error shall be recouped by withholding the amount overpaid from monies due to the operator for services provided pursuant to the state's Subsidized Child Care Assistance Program in an amount not to exceed 20 percent

of each payment to the operator. Should the operator cease to participate in the Subsidized Child Care Assistance Program before the overpayment is fully repaid, the remaining monies shall be recouped by:

- (1) Repayment agreement made with the local purchasing agency; however, the local purchasing agency shall prosecute the operator for failure to make timely payments as required to comply with the terms of the agreement;
- (2) Involuntary repayment by pursuing court action; or
- (3) Wage garnishment as permitted by law.

~~An overpayment made as a result of inadvertent error or fraudulent misrepresentation by the recipient or provider as described in Rule .0308(a) of this Section shall be recouped as follows:~~

- ~~(1) From the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and~~
- ~~(2) By:~~
 - ~~(A) voluntary repayment by the recipient or provider by;~~
 - ~~(B) involuntary repayment by pursuing court action; or~~
 - ~~(C) wage garnishment as permitted by law.~~

(b) An overpayment made to an operator as a result of fraudulent misrepresentation by the recipient or operator shall be recouped by:

- (1) Withholding the amount overpaid from monies due to the operator for services provided pursuant to the state's Subsidized Child Care Assistance Program;
- (2) Repayment agreement made with the local purchasing agency; however, the local purchasing agency shall prosecute the operator for failure to make timely payments as required to comply with the terms of the agreement;
- (3) Involuntary repayment by pursuing court action; or
- (4) Wage garnishment as permitted by law.

~~(b)(c)~~ An overpayment made due to agency error in complying with program rules and statutes shall be corrected by adjustment through the state's subsidized child care Subsidized Child Care Assistance payment system.

~~(c)(d)~~ An underpayment made due to agency or provider operator error in complying with program rules and statutes shall be corrected within 30 days of discovery of the error, but in no

~~event shall an underpayment be corrected more than 90 days from the date of the underpayment.~~
~~the local purchasing agency is not required to correct the underpayment if it is discovered more~~
~~than 45 days from the date the payment is made.~~

~~(d)~~(e) Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10 .0311 and 10A NCAC 10 .0312.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 2001;
Amended Eff. _____; December 1, 2011.*

10A NCAC 10 .0313 is proposed for amendment as follows:

**10A NCAC 10 .0313 TERMINATION OF APPROVAL BASED UPON AN EFFECT OF
ADMINISTRATIVE ACTION ISSUED AGAINST
PROVIDER OPERATOR**

(a) Approval to participate in the Subsidized Child Care Assistance Program ~~All child care~~
~~subsidy payments made pursuant to a Provider Agreement~~ shall terminate 45 days after issuance
of an administrative action revoking, summarily suspending, or denying a license to operate a
child care facility issued pursuant to G.S. 110-90.

(b) An appeal of an administrative action revoking, summarily suspending, or denying a license
~~does~~ shall not stay the termination of approval to participate in the state's Subsidized Child Care
~~Program.~~ Assistance Program.

~~(c) If under appeal,~~ If the operator appeals the termination of approval, the maximum time period
during which payments from the state's Subsidized Child Care Program may be made is 45 days
from the date on the notice of the administrative action.

~~(d) A provider~~ An operator subject to administrative action as described in this Rule ~~Paragraph~~
shall not be paid with subsidized child care funds for any new children enrolled during the 45
day period after the date on the notice of the administrative action.

~~(e)~~(e) A child care ~~provider~~ operator who has received an administrative action revoking or
denying a license by the Division of Child Development and Early Education, or who is
currently under summary suspension, is ineligible to participate in the state's Subsidized Child
Care Assistance ~~Program as a nonlicensed child care home.~~ Program. This includes facilities

that are exempt from licensure pursuant G.S. 110-106, facilities operating in other states, and facilities certified by the United States Department of Defense.

*History Note: Authority G.S. 143B-153;
Eff. December 1, 2011;
Amended Eff. _____.*

10A NCAC 10 .0602 is proposed for amendment as follows:

**10A NCAC 10. 0602 ~~APPROVAL AND CONTINUED PARTICIPATION IN THE~~
SUBSIDIZED CHILD CARE ASSISTANCE
PROGRAM**

(a) ~~Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local purchasing agency. Operators shall:~~

- (1) enroll to participate in the State's Subsidized Child Care Assistance Program through the State's automated provider portal located at providerportal.nc.gov;
- (2) enter into and maintain a contract for payment through the State's Subsidized Child Care Assistance Program vendor; and
- (3) enter into the Subsidized Child Care Assistance Program's Provider Agreement annually.

(b) Any ~~center~~ operator approved for participation in the Subsidized Child Care Assistance Program shall continue to be eligible ~~for~~ as long as the ~~center~~ provider or operator maintains compliance with all of the requirements set forth in this ~~Subchapter. Chapter.~~

(c) To be eligible to participate in the Subsidized Child Care Assistance Program, centers that are exempt from licensure pursuant to N.C.G.S. § 110-106 must comply with all staff orientation and training requirements of the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq. as set forth in 10A NCAC 09 .1101, .1102, and .0304.

~~(e)(d) When a center is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the center to comply with the requirement. If the center fails to comply within the set time limit, approval may be terminated. Upon the first instance that~~

the Division or the LPA determines an operator is out of compliance with any requirement for participation the Division shall:

(1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c);
and

(2) issue a corrective action plan to address the areas of non-compliance and assist
the operator to come into compliance; and

(3) set a time limit for the center to complete the corrective action plan.

~~(d)~~(e) Upon the second instance that the Division or the LPA determines an operator is out of
compliance with any requirement for participation, the operator shall be prohibited from
enrolling new children who receive subsidized child care for one year, and the Division shall:

(1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c);
and

(2) issue a corrective action plan to address the areas of non-compliance and assist
the operator to come into compliance; and

(3) set a time limit for the center to complete the corrective action plan.

(f) An operator who fails to maintain compliance in accordance with Paragraphs (c) and (d) of
this Rule three times in a two-year period shall be terminated from and permanently ineligible to
participate in the Subsidized Child Care Assistance Program.

(g) When an operator is subject to a corrective action plan, the operator shall be prohibited from
accepting any new Subsidized Child Care Assistance Program children.

(h) If the operator fails to fully complete the corrective action plan within the required
timeframe, the Division shall terminate the operator's participation in the Subsidized Child Care
Assistance Program and the operator shall be permanently ineligible to participate in the
Subsidized Child Care Assistance Program.

~~(d)~~(i) Upon request for review by a local, state, or federal agency representative, the operator of a
child care center facility shall immediately provide all records pertaining to his or her
participation in the state's Subsidized Child Care Assistance Program.

(j) If the LPA determines an operator to be out of compliance with any requirement for
participation in the Subsidized Child Care Assistance Program, the LPA shall notify the Division
of the noncompliance within five days of its determination.

(k) An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues the determination, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312.

*History Note: Authority G.S. 143B-153(2a);
Eff. February 1, 1986;
Amended Eff. April 1, 2001; February 1, 1996;
Emergency Amended Eff. August 22, 2016;
Temporary Amendment Eff. October 28, 2016;
Amended Eff. _____.*

10A NCAC 10 .0702 is proposed to be repealed:

**10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE
SUBSIDIZED CHILD CARE PROGRAM**

- ~~(a) Any family child care home approved for participation in the subsidized child care program shall continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this Subchapter.~~
- ~~(b) When a home is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the home to comply with the requirement. If the home fails to comply within the set time limit, approval shall be terminated.~~
- ~~(c) Upon request for review by a local, state or federal agency representative, the operator of a family child care home shall provide records pertaining to his or her participation in the state's subsidized child care program.~~

*History Note: Authority G.S. 143B-153(2a);
Eff. January 1, 1988;
Amended Eff. April 1, 2001; February 1, 1996;
Emergency Amendment Eff. August 22, 2016;
Temporary Amendment Eff. October 28, 2016;
Repealed Eff. _____.*